In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-381

BUSINESSMEN AFFECTED BY THE SECOND YEAR ACTION PLAN (BASYAP), PETITIONERS

v.

DISTRICT OF COLUMBIA REDEVELOPMENT LAND AGENCY, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE FEDERAL AND DISTRICT OF COLUMBIA RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The court of appeals did not issue an opinion; its judgment is set forth at Pet. App. A3–A4. The district court's unreported memorandum opinion and order is set forth at Pet. App. A4–A16.

JURISDICTION

The judgment of the court of appeals (Pet. App. A3–A4) was entered on April 28, 1972. A timely petition for rehearing and suggestion for rehearing *en banc* were denied on June 7, 1972 (Pet. App. A1–A2). The petition for a writ of certiorari was filed on

September 5, 1972. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether petitioners' challenge to the urban renewal program for the District of Columbia was properly rejected upon review of the entire administrative record.

STATUTES INVOLVED

Section 307 of the Housing Act of 1964, 78 Stat. 787, 42 U.S.C. 1460(c), and Section 302(a)(1) of the Housing and Urban Development Acts of 1965, 79 Stat. 474, 42 U.S.C. 1451(e), amended the basic urban renewal statute of 1949 and are set forth at Pet. 4–5.

STATEMENT

Petitioners commenced this action in June 1970 to enjoin part of the downtown District of Columbia urban renewal program. Petitioners are owners and business operators of some of the properties designated for acquisition for urban renewal. Named as defendants were the Secretary of the Department of Housing and Urban Development (HUD), the District of Columbia Redevelopment Land Agency (RLA), the National Capital Planning Commission (NCPC), the District of Columbia Government and City Council, and the National Capital Downtown Committee, Inc. (Downtown Progress), a nonprofit corporation of downtown land and building owners. Petitioners alleged that there was a lack of adequate citizen participation in adopting the renewal program and that HUD had improperly refused to afford petitioners a hearing and had failed to make a timely finding that

the objectives of the program could not be achieved by rehabilitation.

After an evidentiary hearing, the district court denied petitioners' motion for a preliminary injunction. The court of appeals affirmed. 442 F. 2d 883.

Subsequently, after extensive discovery and upon a review of the entire administrative record, the district court granted respondents' motions for summary judgment (Pet. App. A4–A16). The court found that Downtown Progress, one of the organizations designated in the "workable program" as a vehicle for citizen participation, conducted an "intensive campaign" to involve all interested persons in the development of the renewal plans and that it in fact "afforded plaintiffs and other affected persons ample opportunity to participate in the process * * *" (Pet. App. A9–A10). The court also found that HUD had no statutory authority to conduct the hearings sought by petitioners and that HUD's execution of the funding agreement for the redevelopment program was in effect a certification that it had determined rehabilitation would not achieve the program's objectives (Pet. App. A12–A13, A15–A16). The court of appeals affirmed without opinion (Pet. App. A3–A4).

ARGUMENT

The decision below is correct, and the petition presents no issue warranting review by this Court.[1]

[1] Petitioners' suggestion (Pet. 9)—that "this is the first time where this course of action (taking from one set of commercial property owners and turning it over to other private interests for commercial development) has ever been attempted under the guise of an urban renewal program and for this reason it

1. There is no substance to petitioners' charge (Pet. 11–13) that HUD unlawfully refused them a hearing and unlawfully refused them access to its files. There is no statutory provision for a formal or informal hearing and no HUD machinery for an adjudicatory proceeding. Petitioners nevertheless met with HUD officials on one occasion and presented their views both before and after the commencement of this action, the City Council's approval of the urban renewal plan, and HUD's allocation order for funding (Fed. Exs. J–1 through J–14; Fed. Ex. 22–HUD and enclosure). Petitioners' direct request to HUD for access to "data and records" and for a "hearing" at which they could rebut the findings of RLA concerning the condition of their buildings was made after this suit had been filed, and was properly denied. The district court thereafter permitted broad discovery, and respondents produced voluminous data and records.

In *Shannon* v. *United States Department of Housing & Urban Development* 436 F. 2d 809 (C.A. 3), relied on by petitioners, the court held "only that the agency's judgment [as to site or type selection] must be an informed one" based upon "the relevant racial and socio-economic information necessary for compliance with

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has nation-wide implications"—is answered by *Berman* v. *Parker*, 348 U.S. 26, 33–34, where this Court rejected a similar contention:

> Appellants argue that this makes the project a taking from one businessman for the benefit of another businessman. But the means of executing the project are for Congress and Congress alone to determine, once the public purpose has been established. * * *

its duties under the 1964 and 1968 Civil Rights Acts" (436 F. 2d at 821, 822). That decision does not stand for the broad proposition advanced by petitioners that HUD must offer persons affected by an urban renewal project the opportunity to submit rebuttal data at a formal hearing prior to approval of the project for funding (Pet. 13).[2] The Secretary of HUD is under no statutory obligation here to duplicate the efforts of local agencies in determining the condition of the buildings in the project area. His determination that the "workable program" is adequately designed "to eliminate * * * slums and urban blight, to encourage needed urban rehabilitation, [or] to provide for the redevelopment of blighted, deteriorated, or slum areas" (42 U.S.C. 1451(c)), may properly rest in part upon the local agency's evaluation of the affected buildings, if in his view that evaluation is reliable.

2. Petitioners contend that the Secretary of HUD failed to determine prior to entering the funding agreement that the objectives of the program could not be achieved through rehabilitation (Pet. 17–19). Although the funding contract was executed on November 18, 1970, and full endorsement of the HUD form embodying the rehabilitation finding was not completed until December 18, 1970, the record supports the district court's finding that the necessary

[2] Indeed, the court emphasized that there was no requirement that affected residents be heard, so long as the necessary information is obtained. Thus, a report from the applicant on racial concentration might be an acceptable means of fulfilling the agency's obligation. 436 F. 2d at 821.

determination here had in fact been made prior to the agreement, notwithstanding that the formalities of endorsement were delayed by "oversight" (Pet. App. A13).[3]

3. Under 42 U.S.C. 1451(e), the Secretary of HUD must determine that the project to be funded "is in accord with the [workable] program." The program here required "'clear evidence'" of opportunities for citizen participation and for "'clear and direct access to decision making * * *.'" Petitioners contend here, as in the courts below, that they did not have an adequate opportunity to participate in the decision making process (Pet. 15–17). The district court found, however, that petitioners had a full opportunity to participate through meetings and hearings organized by Downtown Progress, letters to and meetings with RLA representatives, presentations at open sessions of NCPC, and testimony before the City Council (Pet. App. A9–A12, A13–A14, A15). These findings are fully supported by the record and should not be disturbed.

[3] The Moore plan referred to by petitioners (Pet. 11, 18–19) was developed after the city's renewal program had been adopted and has not been submitted by the city to HUD for consideration pursuant to 42 U.S.C. 1451(c) and (e) which make clear, in the words of the latter provision, that the "program for community improvement [is to be] presented by the locality * * *."

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted.

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